

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BONITA JOHNSON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 223,197
<b>LABOR READY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>LEGION INSURANCE COMPANY,</b>	)	
c/o GATES McDONALD,	)	
Insurance Carrier	)	

**ORDER**

Claimant requested Appeals Board review of Administrative Law Judge Floyd V. Palmer's February 9, 1998, preliminary hearing Order for Compensation.

**ISSUES**

Claimant requested medical treatment and temporary total disability benefits for work-related injuries to her head, neck, and low back. The Administrative Law Judge granted claimant's request for preliminary benefits for work-related injuries to claimant's head and neck but denied preliminary benefits for claimant's low-back injury. Claimant contends she injured her head, neck, and low back as a result of a May 13, 1997, work-related accident. Respondent agrees that claimant sustained work-related injuries to her head and neck but denies she also sustained a low-back injury on May 13, 1997.

Respondent further contends the Administrative Law Judge erred in granting claimant temporary total disability benefits for 3.29 weeks. Respondent argues the evidence does not show that claimant was temporarily and totally disabled for that period of time.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant testified she injured her head, neck, and low back when three 2x4's fell on her and knocked her to the floor on May 13, 1997, while employed by the respondent. The day after the accident, May 14, 1997, claimant sought medical treatment at St. Francis Hospital Emergency Department and was treated for neck soreness and a scalp contusion. Pain medication was prescribed. Claimant was released to return to work and to follow up, if needed, with her family physician.

Claimant testified her symptoms worsened and on May 15, 1997, she sought additional medical treatment at Stormont-Vail Medical Center's Emergency Room. Claimant complained of headaches and dizziness. She was diagnosed with a closed head injury. A CT scan of her head was normal. Claimant was released to continue with her medications and return if her symptoms worsened.

Claimant's headaches continued and she returned to St. Francis Hospital Emergency Department on June 4, 1997. At that time, the emergency room physician referred claimant to neurologist Jonson Huang, M.D.

Dr. Huang first saw claimant on June 11, 1997, with complaints of constant headaches, severe head pain with dizziness, blurred vision, and nausea. Additional complaints were short-term memory loss, numbness of the right upper extremity, and neck stiffness. For the first time since her accident, Dr. Huang's June 11, 1997, medical treatment record contained a notation that claimant had low-back pain. However, claimant indicated she had the pain since 1985 from a stun gun injury. The doctor's impression was closed head injury, right arm numbness, neck pain, and chronic low-back pain. He conducted nerve conductive studies, EMG tests, and CT scan that were all considered normal. Dr. Huang treated claimant conservatively for her head and neck injuries and as indicated by the last medical treatment record dated October 17, 1997, those injuries had improved.

Claimant's low-back pain, however, had not improved. When claimant saw Dr. Huang on August 29, 1997, she had increased complaints in the right low back, right hip, right knee, and leg pain. Claimant gave a history of having had a confrontation with the police on July 29, 1997, which required her to be treated at Stormont-Vail Emergency Room. Because of claimant's continuing low back complaints, on October 22, 1997, Dr. Huang referred claimant to the University of Kansas Medical Center in Kansas City, Kansas, for orthopedic evaluation and diagnosis of claimant's low-back pain.

Claimant testified that her low-back pain was a result of the May 13, 1997, work accident. She testified she contemporaneously made low-back complaints to all the medical personnel who treated her following the accident.

The Appeals Board finds, for preliminary hearing purposes, that claimant has failed to prove that her low-back problems were caused or aggravated by the May 13, 1997, work-related accident. The Appeals Board finds the medical records admitted into evidence

at the preliminary hearing support this conclusion. The medical records indicate claimant did not make a complaint in reference to her low back until noted by Dr. Huang on June 11, 1997. Those symptoms were, however, determined as chronic pain from a 1985 injury. Furthermore, claimant saw Dr. Huang on August 29, 1997, with worsening low-back symptoms after a confrontation with police. The Appeals Board finds the more plausible explanation for claimant's referral to the University of Kansas Medical Center by Dr. Huang is for the purpose of evaluating and diagnosing a preexisting chronic low-back problem intensified by this confrontation. There is no medical treatment record that relates claimant's low-back problems to her work-related accident.

The respondent questioned the Administrative Law Judge's ordering respondent to pay claimant 3.29 weeks of temporary total disability benefits. Respondent argues claimant was never taken off work by a physician for her head and neck injuries.

The Appeals Board has had the opportunity on numerous other occasions to address whether it has jurisdiction to review an administrative law judge's preliminary hearing order that grants or denies a request for temporary total disability compensation. The preliminary hearing statute, K.S.A. 1997 Supp. 44-534a(a)(2), specifically authorizes the administrative law judge to grant or deny temporary total disability compensation or medical compensation pending a full hearing on the matter. The Appeals Board finds, at this juncture of the proceeding, the Administrative Law Judge did not exceed his jurisdiction when he granted claimant's request for temporary total disability compensation.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation dated February 9, 1998, entered by Administrative Law Judge Floyd V. Palmer should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1998.

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BOARD MEMBER

c: Bonita Johnson, Topeka, KS  
Timothy G. Lutz, Overland Park, KS  
Administrative Law Judge, Topeka, KS  
Philip S. Harness, Director